WONG YET ENG

v.

CHIN CHENG JOO

FEDERAL COURT, JOHOR BAHRU
WAN SULEIMAN FJ
MOHD. AZMI FJ
HASHIM YEOP SANI FJ
[CIVIL APPEAL NO. 202 OF 1982]
16 JUNE 1984

LANDLORD AND TENANT: *Controlled premises - Application for possession - Hearing by Appeal Board out of time - Whether r. 10(3), Control of Rent (Johore) (Rent Tribunal) 1967 mandatory or directory - Grounds of decision of Rent Tribunal not given - Whether a denial of natural justice.*

The appellant was the landlord of premises controlled under the Control of Rent Act 1966 ("the Act"). On 29 May 1979, the appellant applied to the Rent Tribunal for possession of the ground floor, which was occupied by the respondent, for the purpose of development under s. 18 of the Act. On 20 January 1981 the Rent Tribunal gave its decision in favour of the appellant. The respondent appealed to the Rent Appeal Board and on 7 October 1981 the appeal was dismissed. The respondent then applied to the High Court for an order of *certiorari.* Two of the grounds of the application were directed against the Appeal Board, that it had failed to comply with the provision of r. 10(3) of the Control of Rent (Johore) (Rent Tribunal) Rules 1967 in that it failed to hear and determine the appeal within the period stipulated in the rule, thereby rendering the Board's said decision null, void and of no effect; and that there was a denial to the applicant of natural justice at the hearing before the Appeal Board in that the applicant's Counsel could not have presented the applicant's case fully and adequately without a statement of the ground of the decision made by the Rent Tribunal. The application was granted and the decision of the Appeal Board quashed. The appellant appealed.

Held:

[1] Though s. 15 of the Act states that any decision of the Appeal Board shall be final and shall not be questioned in any Court, *certiorari* will lie if an error on the part of the Appeal Board goes to jurisdiction or if the Appeal Board had done or failed to do something in the course of the enquiry as to render its decision a nullity.

[2] Non-compliance with the provisions of r. 10(3) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967, did not however nullify the Appeal Board's decision in the case before the Court. The provision regarding a time limit to hear and determine an appeal is directory rather than mandatory.

[3] Neither was there any denial of natural justice as claimed by the respondent. An application for recovery of possession under s. 18 for the purposes of development is unequivocal. When a Rent Tribunal makes an order allowing the application, it can be on one ground and one ground only.

[Appeal allowed.]

Cases referred to:
The South East Asia Firebricks [1980] 2 MLJ 165
Tai Teik Onn & Anor. v. Ong Ewe Te [1982] 1 MLJ 33
Capt. Kamarul Azman Jamaluddin v. Wan Abdul Majid & Ors. [1983] CLJ (Rep) 1
Mersing Omnibus Co. Sdn. Bhd. v. Minister of Labour & Manpower & Anor. [1983] 2 MLJ 54; [1983] CLJ (Rep) 266

Legislation referred to:
Control of Rent Act 1966, ss. 13(1)(a), (b), (c), 15, 15(3), 16, 18, 20
Control of Rent (Johore) (Rent Tribunal) Rules 1967, r. 10(3)
Rules of the High Court 1980, O. 51 r. 1(2)

Other sources referred to:
Halsbury's Laws of England, 4 Edn. Vol. 1, p. 26, para. 24
Maxwell on Interpretation of Statutes, 12 Edn., p. 314, 315

For the appellant - C. Das; M/s. Shook Lin & Bok
For the respondent - Lee Buck Heng; M/s. Abdullah A. Rahman & Co.

JUDGMENT

Wan Suleiman FJ:

The appellant is the landlord of No. 18, Jalan Engan, Batu Pahat, Johore, controlled premises under the Control of Rent Act, 1966. On 29 May 1979 appellant applied to the Rent Tribunal, District of Batu Pahat for possession of the ground floor, which was occupied by the respondent, for the purpose of development under s. 18 of the Act.

At the hearing before the Tribunal, the respondent was absent nor did Counsel appear on her behalf. On 20 January 1981 the Tribunal gave its decision in favour of appellant.

Respondent appealed and on 7 October 1981 the appeal was dismissed by the Rent Appeal Board.

Respondent then applied to the High Court at Muar for an order of *certiorari* to quash the decision of the Appeal Board. The motion was duly heard on 18 July 1982 and the decision of the Rent Appeal Board was quashed. We are unfortunate in not having the benefit of any grounds of judgment.

Six grounds on which the relief was claimed were set out in the statement filed pursuant to O. 51 r. 1(2) of the RHC 1980 and are set out hereunder:

(1) The Rent Tribunal in arriving at its decision made on 20 January 1981 failed to comply with the provisions of r. 8(j) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to state the reason or reasons for making the decision thereby rendering the Appeal Board's decision made on 7 October 1981 null, void and of no effect;

(2) The Rent Tribunal failed to comply with the provisions of r. 8(j)(ii) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to notify its decision to the parties concerned within the period stipulated in the said rule thereby rendering the Appeal Board's said decision null, void and of no effect;

(3) The Rent Tribunal failed to comply with the provisions of r. 9(4) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to state the grounds on which the Tribunal arrived at its decision thereby rendering the Appeal Board's said decision null, void and of no effect;

(4) The Respondent Wong Yet Eng obtained the Order of the Rent Tribunal dated 20 January 1981 by misleading the Tribunal into believing that one Kee Kong (holder of NRIC No. 0041706) a material witness who gave evidence at the hearing of the Respondent's application on 8 December 1980 was at the material time connected with Syarikat Kim Trading Co. of No. 30A Jalan Keruing, Taman Batu Pahat, Batu Pahat, Johore thereby rendering the Appeal Board's said decision null, void and of no effect;

(5) The Appeal Board failed to comply with the provisions of r. 10(3) of the Control of Rent (Johore) (Rent Tribunal) Rules, 1967 in that it failed to hear and determine the appeal within the period stipulated in the said rule, thereby rendering the Board's said decision null, void and of no effect;

(6) There was a denial to the Applicant of natural justice at the hearing before the Appeal Board in that the applicant's Counsel could not have presented the applicant's case fully and adequately without a statement of the grounds of the decision made by the Rent Tribunal.

Out of these as Encik Das for appellant correctly indicated, grounds 1 to 4 were directed against the Rent Tribunal. He therefore argued that the learned Judicial Commissioner must have granted his order on the basis of grounds (5) and (6) only, these grounds being the only ones directed against the Appeal Board.

Section 15 of the Act says that "... any decision made by the Appeal Board shall be final and shall not be questioned in any Court." No doubt with *The South East Asia Firebricks* [1980] 2 MLJ 165 case in mind, both sides concede that *certiorari* will lie if the error goes to jurisdiction or if the Appeal Board had done or failed to do something in the course of the enquiry as to render its decision a nullity.

The fact that the Appeal Board did not hear within 6 weeks does not go to jurisdiction, but is merely a breach of procedural rules, says Encik Das. He relies on *Tai Teik Onn & Anor. v. Ong Ewe Te* [1982] 1 MLJ 33 where an identical point was raised. The Appeal Board in that case, where there was an identical rule, in the State of Perak for the Board to hear and determine the appeal within six weeks from the receipt of the memorandum of appeal, had done so more than 2 years later. B.T.H. Lee J was of the view that such non-compliance did not go to the foundation of the jurisdiction of the Appeal Board.

Continuing to treat this as a breach of the rules of procedure, we were referred to the Privy Council decision the *Capt Kamarul Azman Jamaluddin v. Wan Abdul Majid & Ors.* [1983] CLJ (Rep) 1, where the sole question in the appeal was whether the fact that the oath was not administered by the person prescribed in the Rules of Procedure rendered the Court-martial improperly conducted, with the consequence that it had no jurisdiction to try the appellant. It was held that failure to observe these mandatory provisions, though a serious matter, was an error of procedure which did not go to the jurisdiction of the Court, so that the appeal was dismissed.

We must confess to being quite unable to follow some of Encik Lee's counter to this ground for whilst maintaining that this failure to comply with what he too regards as a requirement of procedure made the decision of the Appeal Board a nullity, he also cited in support the decision of this Court in *Mersing Omnibus Co. Sdn. Bhd. v. Minister of Labour & Manpower & Anor*. [1983] CLJ (Rep) 266. There the appellant was out of time and neither sought an extension of time nor accounted for the delay to the satisfaction of the learned Judge. It was held that leave should not be granted to appellants to apply for *certiorari* and the learned Judge had no jurisdiction to do so. We can only conclude that Encik Lee finds support in this authority for the proposition that failure to comply with the procedural requirement as

to time by the Tribunal nullifies the decision of the Appeal Board.

He cites two passages from *Halsbury's Laws of England* 4th Edn. Vol. 1. At p. 26 para. 24 there appears the following passage:

> Waiver and estoppel. It is a general principle of law that an excess of statutory power cannot be validated by acquiescence in or failure to object to the excess, or by the operation of an estoppel. Hence it is possible for a public authority to plead the invalidity of its own conduct.

At p. 10 para. 27 under the heading "Validity" there appears this passage:

> Validity. If an act or decision, or an order or other instrument, is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Such an act can therefore be successfully impeached in collateral proceedings, and no legally recognised rights founded on the assumption of its validity should accrue to any person even before the act is declared to be invalid or set aside in a Court of law.

Encik Lee says that r. 10(3) is mandatory, and even if one were to assume that it was directory there must be substantial compliance with the statutory provision. Where the period prescribed is six weeks within which to hear the appeal and come to a decision, doing so some two years later is no substantial compliance, he submits. He cited a number of authorities wherein non-compliance with mandatory statutory requirements rendered decisions so made null and void.

In the 12th Edn. of *Maxwell on Interpretation of Statutes,* at pp. 314/315 is a most enlightening passage which reads:

> It is impossible to lay down any general rule for determining whether a provisions is imperative or directory. 'No universal rule,' said Lord Campbell LC 'can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of Justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed.' And Lord Penzance said, 'I believe as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.

It is plain that the object of r. 10(3) in fixing a time limit for hearing and determining the appeal is to ensure that appeals are speedily dealt with. But the composition of the Appeal Board as prescribed by s. 15(3) of the Act makes the unusual practice of fixing of a time limit for completion difficult to implement. We can safely assume that the rule making authority was aware of that. Taking everything into consideration we are inclined to take the view that this requirement is directory rather than mandatory and that non-compliance does not nullify the Board's decision.

In Ground 6, respondent's complaint is that there was denial of natural justice at the hearing before the Appeal Board because without a statement of the grounds on which the Rent Tribunal came to its decision, Counsel for respondent was unable to present his case fully and adequately.

We are however inclined to agree with Encik Das that an application for recovery of possession under s. 18 for the purpose of development is unequivocal. When a Rent Tribunal makes an order allowing the application it can be on one ground, and one ground only. It would be inappropriate to make comparison between the various grounds on which a Court

could make orders for recovery of possession on an application under s. 16 with an application to the Rent Tribunal under s. 18, but where the latter hears and determines the application under s. 13(1)(a), to determine fair rent, or under s. 13(1)(b) and s. 20 to apportion and determine fair rent, or under s. 13(1)(c) for increase of rent, the real importance of giving a reason or reasons for its decision becomes obvious, and only in such instances could respondent have good reason to complain.

We would therefore allow this appeal with costs.

Also found at [1984] 2 CLJ 98